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PAYMENT FOR STOCK IN PROPERTY. — When a "trust" is formed by the combination of independent plants, the stock of the "trust" is usually issued in exchange for the plants. For this reason, a recent article in the American Law Review is worthy of attention. *Payment for Shares in Property*, by Seymour D. Thompson, 36 Am. L. Rev. 840 (Nov.-Dec., 1902). Mr. Thompson concedes that shares may be sold at their par value for property at its true valuation. He goes on to point out that even though the property is over-valued, most courts will uphold the transaction in the absence of fraud, even as against creditors of the corporation. He himself, however, evidently prefers the view that property is payment to the extent only of its true value, not of the contract valuation.

To avoid confusion, it is important to consider first the rights of creditors when shares of a corporation are issued as "full-paid" at less than par for cash. A creditor who had no knowledge of the fact at the time his claim arose, may, in equity, in case the corporation becomes insolvent, have the agreement by which the part payment was received in full satisfaction set aside, and may then force any holder not claiming through a *bona fide* purchase to contribute the unpaid balance on the par value of his stock. *Scovill v. Thayer*, 105 U. S. 143; *Upton v. Tribilcock*, 91 U. S. 45. The ground of relief is that issuing shares for less than par is a fraud on creditors, since credit has presumably been given to the corporation on the representation that its subscribed capital is available as a fund to pay its debts. It follows that a creditor who knows of the issue below par or one whose claim arises before such issue, has no remedy, since he cannot have acted upon such a representation. *First National Bank v. Gustin, etc., Mining Co.*, 42 Minn. 327.

When shall shares issued not for cash, but for property, be considered "full-paid"? If money already received from a sale of stock at par for cash were used in purchasing property from the stockholder, no over-valuation of the property would invalidate the transaction unless it were fraudulent. The rule should be no different when the same result is achieved by issuing the shares directly for the property. The practical consideration that the tendency toward fraud may then be greater than in case of a subscription and a subsequent purchase made *bona fide* as an independent transaction, is offset by the equally practical consideration that the rule imposing liability when property has been over-valued is unjust to the owner, since it deprives him of the benefit of any good bargain that he may make, and at the same time leaves him without remedy in case the property is under-valued. On principle, then, over-valuation should impose no liability unless it is fraudulent. This rule is supported by the great weight of authority. *Brant v. Ehlen*, 59 Md. 1; *Coffin v. Ransdell*, 110 Ind. 417.

If, however, the over-valuation has been fraudulent, subsequent creditors should be allowed to have the bargain by which the property was received in payment set aside in equity, and the holders of the stock should be liable for the difference between its par value and the true value of the property turned in. Some courts seem to consider that the only remedy is a rescission of the whole bargain, the corporation returning the property and receiving back the stock. See *Du Pont v. Tilden*, 42 Fed. R p. 87. This view, although supported by Mr. Cook in his work on Corporations, in § 42, not only gives the creditor a worthless remedy, since the stock is seldom more valuable than the property, but also seems to overlook the fact that when shares are issued for property there is a double transaction, — a subscription for stock and a payment of that subscription in property. As has already been stated, when the agreement by which shares are sold for cash at less than par is set aside, the subscriber still remains liable on his subscription. By the great weight of authority the same result follows when the bargain by which specific property is accepted in payment is set aside for fraud. *Coleman v. Howe*, 154 Ill. 458; *Hastings Malting Co. v. Iron Range Brewing Co.*, 65 Minn. 28. If, however, the stock is transferred to an innocent purchaser for value, the latter is not liable. *Berry v. Rood*, 168 Mo. 316.